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Letter dated 19 November 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council

On 26 March 2004, the Security Council adopted resolution 1534 (2004), in which the Council requested each Tribunal to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken to implement the completion strategy and what measures remain to be taken.

After consulting with the Prosecutor and in conformity with resolution 1534 (2004), I am pleased to submit to you a revised version of the completion strategy of the International Criminal Tribunal for Rwanda, containing the assessment requested (see annex).

(*Signed*) Erik Møse
President

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Annex

Completion strategy of the International Criminal Tribunal for Rwanda

Summary

The present report outlines the completion strategy of the International Criminal Tribunal for Rwanda, based on the information available as of 19 November 2004 and taking into account the deadlines set in Security Council resolutions 1503 (2003) and 1534 (2004).

Trials of 23 persons have been completed. Cases involving 25 accused are in progress, of which one trial is at the stage of judgement writing. Consequently, the number of persons whose trials have been completed or are in progress is 48. Eighteen accused are awaiting trial. The Prosecutor intends to transfer the cases of 5 detainees to national jurisdictions. The trials of the remaining 13 detainees will start from 2005 onwards, depending on the Trial Chamber and courtroom availability.

The Prosecutor will focus on those accused who bear the heaviest responsibility for the crimes committed in 1994. Fifteen indicted persons are still at large, of whom the Prosecutor intends to transfer four to national jurisdictions for trial. Moreover, the Prosecution is presently conducting 15 remaining investigations, to be completed by the end of 2004, which could result in a maximum of 15 new indictments. In all likelihood, however, the number of trials will involve less than the 26 (11 and 15) persons from these two groups since some of these individuals may have died and others may never be arrested.

By resolution 1512 (2003), the Security Council increased the number of ad litem judges that may sit at any one time from four to nine and allowed such judges to adjudicate over pre-trial matters. As a consequence of these reforms, it is estimated that the cases involving the 25 accused whose trials are currently in progress will be completed from 2005 to 2006.

The last of the trials of the remaining 13 detainees (which will commence from 2005 onwards) could be concluded by 2006 or 2007. Indictees and suspects presently at large (from the group of a maximum of 26 persons) will be tried in 2007 and 2008. On the basis of the information currently available, it is estimated that by 2008, the Tribunal may have completed trials involving between 65 and 70 persons.

I. Introduction

1. The present document contains an updated and revised version of the completion strategy of the International Criminal Tribunal for Rwanda as at 19 November 2004. It takes into account Security Council resolutions 1503 (2003) and 1534 (2004), adopted on 28 August 2003 and 26 March 2004, respectively. The document has been progressively expanded based on contributions from the President, the Prosecutor and the Registrar. The basis for the consultations between these three organs was originally a document entitled "Completion strategy of the Office of the Prosecutor", containing developments as of 29 April 2003.[1] The present document, which is the fourth version of the completion strategy, is based on the Prosecutor's updated version of 28 February 2004 (available on request) and developments during the second half of 2004.[2] Revised versions of the completion strategy will be submitted in conformity with Resolution 1534 (2004).

2. It is recalled that the first accused was transferred to Arusha in May 1996. Since the first trial started in January 1997, the Tribunal has handed down 17 judgements involving 23 accused. Of these, 20 were convicted and 3 acquitted. Six of these convicts are currently serving their sentences in Mali. The total result of the second mandate (1999-2003) amounts to 9 judgements involving 14 accused. This represents a doubling of the number of accused that were tried, when compared to the first mandate (1995-1999). Following the commencement of the third mandate, two single-accused trials (Gacumbitsi and Ndindabahizi) commenced in July and September 2003. Judgements in these two cases were delivered in June and July 2004, respectively. The total number of judgements rendered by the Tribunal thus far is set out in appendix I.

3. In addition to the 23 accused whose trials have either been completed or are at the stage of judgement writing, 25 detainees in the United Nations Detention Facilities in Arusha are involved in eight trials. Five of these trials are cases involving a number of accused and are voluminous: the Butare Case (six accused), the Military I Case (four accused), the Government Case (four accused), the Karemera et al. (four accused) and the Military II Case (four accused). These last two trials are at a relatively early stage. Three trials are single-accused cases. The Muhimana trial commenced on 29 March 2004, and is now at the stage of closing arguments. The Simba trial commenced on 30 August 2004, and the Prosecution has

[1] A first version of the completion strategy was submitted to United Nations Headquarters on 14 July 2003. That document was prepared within the context of General Assembly resolution 57/289, paragraph 15 (a), which provided that the proposed budget of the Tribunal for 2004-2005 should include detailed information as to how the resources requested for the biennium would support the development of a sound and realistic completion strategy. A second version of the completion strategy was submitted to United Nations Headquarters on 29 September 2003. That document formed the basis of the request to increase the number of ad litem judges sitting at any one time from four to nine. By resolution 1512 (2003), the Security Council granted the request. The third version of the document was submitted to the President of the Security Council on 30 April 2004 and formed the basis of the assessments provided by the President of the Tribunal and the Prosecutor during the Council's meeting on 29 June 2004.

[2] Following his first address to the Security Council in October 2003, the new Prosecutor, Hassan B. Jallow, reviewed all the cases that are not currently on trial, with a view to determining which cases could reasonably be completed within the time frame set by the Council in its resolution 1503 (2003). The document dated 28 February 2004, entitled "Completion strategy of the Office of the Prosecutor," was the result of that review.

closed its case. The Seromba trial started on 20 September 2004 and is approaching the end of the Prosecution's case. Further details are given below (see sections II and III below). Consequently, the total number of accused whose trials have been completed or are currently in progress is 48.

4. Of the remaining 18 detainees, the Prosecutor intends to transfer 5 to national jurisdictions. The other 13 accused will have their cases heard when the Tribunal's capacity so allows (see paras. 13-15 and 28 below).

5. Fifteen indictees are still at large. The Prosecutor intends to transfer four of those cases to national jurisdictions for trial. Some of the 15 accused may be dead, whereas others may never be found. The actual number of these persons actually brought to trial at the Tribunal will therefore be less than 11 (see, para. 29 below).

6. There are now 15 suspects at large who are currently under investigation. The Prosecutor intends to complete these investigations by the end of 2004. At present, it is uncertain how many of these persons will actually be indicted, since some of them may have died and others may never be found. Indictments will be submitted for confirmation no later than October 2005 (see paras. 30-32).

7. The Prosecutor considers that 40 suspects could be tried in national jurisdictions. He is currently engaged in discussions with some States to this end. In the event that it is not possible to transfer some of these cases to national jurisdictions, the Prosecutor will return to the Security Council with alternative proposals (see section VI below).

8. Security Council resolution 1503 (2003) provides that all work of the Tribunal, as well as for the International Criminal Tribunal for the former Yugoslavia, shall be completed by 2010. It is difficult at this stage to indicate a completion strategy for the International Criminal Tribunal for Rwanda Appeals Chamber, as it is linked to the International Criminal Tribunal for the former Yugoslavia completion strategy. It is recalled, however, that all International Criminal Tribunal for Rwanda judgements except one have been appealed. At present, nine judgements involving 14 accused are on appeal (Ntakirutimana, Niyitegeka, Semanza, Kajelijeli, the Media Case, Kamuhanda, the Cyangugu Case, the Gacumbitsi and the Ndindabahizi Case). It is anticipated that the Appeals Chamber's already heavy workload will in all likelihood continue to increase. It should also be noted that appeals are normally lodged by both (in multi-accused cases all) parties. Therefore, the real number of appeals is much higher than the number of judgements on appeal.

II. Recent judgements and trials in progress

9. On 3 December 2003, Trial Chamber I delivered judgement in the so-called Media Case. It involved three accused (Barayagwiza, Nahimana and Ngeze) and was the most voluminous case heard by that Chamber during the second mandate (1999-2003). Originally, the Media trial was being conducted contemporaneously with the preparation of judgement in the Bagilishema Case, which was delivered on 7 June 2001. It was twin-tracked with the trial of Gérard and Elizaphan Ntakirutimana, which began on 18 September 2001 and concluded with the judgement on 19 February 2003. The Media Case was then twin-tracked with the Niyitegeka trial, which started on 17 June 2002 and concluded with judgement on

16 May 2003.[3] Following the commencement of the third mandate in 2003, Trial Chamber I was reconstituted and has been hearing the continuation of the Military I Case (Bagosora, Kabiligi, Ntabakuze and Nsengiyumva), transferred from the previous Trial Chamber III. The Prosecution recently closed its case after having called 82 witnesses. Trial Chamber I has also conducted the Ndindabahizi trial (from 1 September 2003), in which judgement was delivered on 15 July 2004, and the Simba trial (from 30 August 2004), in which the Prosecution recently closed its case.

10. Trial Chamber II was engaged in three trials concurrently during the second mandate. Judgement in the Kajelijeli trial was rendered on 1 December 2003. The Kamuhanda trial concluded with judgement on 22 January 2004. Particularly voluminous is the Butare trial. It involves six accused, which is the largest number tried jointly before the Tribunal (Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje). One of the judges in this Chamber was not re-elected for the third mandate (2003-2007). In its resolution 1482 (2003), the Security Council did not extend his mandate for the purpose of enabling him to continue sitting on the Butare Case. On 15 July 2003, the Chamber decided that the trial should continue with a substitute judge under rule 15 bis of the Rules of Procedure and Evidence ("the Rules"). Appeals against this decision were dismissed by the Appeals Chamber on 24 September 2003. In the third mandate, following the delivery of judgements in the Kajelijeli and Kamuhanda trials, Trial Chamber II has given priority to the completion of the Butare trial, and the Prosecution recently closed its case after having called 59 witnesses. The Trial Chamber also commenced trial in the Government Case, involving four government ministers (Casimir Bizimungu, Justin Mugenzi, Jerome Bicamumpaka and Prosper Mugiraneza), and is approaching the end of the Prosecution case in that trial. On 20 September 2004, the Chamber commenced the Military II Case, which is still at an early stage due to Defence counsel's illness.

11. Trial Chamber III heard three trials contemporaneously during the second mandate. Judgement was given in the Semanza Case (one accused) on 16 May 2003. The Cyangugu trial with three accused (Ntagerura, Bagambiki and Imanishimwe) concluded with judgement on 25 February 2004. On 2 April 2002, the Chamber also started the Military I trial involving 4 accused (Bagosora, Kabiligi, Ntabakuze and Nsengiyumva) and heard evidence over 32 trial days. Following the reconstitution of the Chambers in early June 2003, this case was transferred to Trial Chamber I (see para. 9 above). In the third mandate, Trial Chamber III has heard the Gacumbitsi trial (from July 2003), in which judgement was delivered on 17 June 2004, and the Muhimana trial (from March 2004), which is now at the stage of closing arguments and in which judgement is expected in early 2005. The Karemera et al. Case commenced on 27 November 2003. Following the Appeals Chamber's decision of 28 September 2004 and its reasons of 22 October 2004, the trial will start *de novo* before a different Trial Chamber Section in Trial Chamber III.

[3] "Twin-tracking" implies that two trials are heard in consecutive slots, for instance according to the following pattern: trial A five weeks, trial B five weeks, trial A five weeks, and so forth. Defence counsel in trial A will leave Arusha while trial B is heard. The purpose of this system is to use inevitable breaks during one trial to ensure progress of another case. Such breaks allow the Prosecution and the Defence to prepare for the next stage of the proceedings (for instance, by interviewing witnesses).

12. The five single-accused cases that have started in the third mandate led to two judgements in 2004 (Gacumbitsi, Ndindabahizi) and will result in three judgements in 2005 (Muhimana, Simba and Seromba). The presentation of the Defence case in the Butare and Military I trials, involving a total of 10 accused, is expected to be completed in 2005. The situation is the same with the Government Case. The Karemera et al. Case and the Military II Case are also complex trials. It is estimated that these two multi-accused trials will be completed in 2006. An overview of ongoing trials is presented in appendix II.

III. Remaining detainees

13. Eighteen detainees in Arusha are awaiting trial. All these cases are single-accused trials. Some of them will start in 2005, leading to judgements in late 2005 or 2006. The number of these depends on the Trial Chamber capacity. The Tribunal is already in the process of scheduling one such case. Further details are given in appendix III.[4]

14. All of the remaining detainees may not be tried by the Tribunal. In determining which individuals should be tried before the Tribunal, the Prosecutor will be guided by the need to focus on those who are alleged to have been in positions of leadership and those who, according to the Prosecutor, bear the greatest responsibility for genocide. This concentration on the most senior leaders suspected of being most responsible for crimes committed within the jurisdiction of the Tribunal is in conformity with Security Council resolution 1534 (2004). The criteria to be taken into consideration when making this determination are as follows:

(a) The alleged status and extent of participation of the individual during the genocide;

(b) The alleged connection an individual may have with other cases;

(c) The need to cover the major geographical areas of Rwanda in which the crimes were allegedly committed;

(d) The availability of evidence with regard to the individual concerned;

(e) The concrete possibility of arresting the individual concerned;

(f) The availability of investigative material for transmission to a State for national prosecution.

15. On the basis of these criteria, the Prosecutor intends to transfer the cases of five of the present detainees to national jurisdictions for trial.[5] It will be for the Trial Chambers to decide on the requests for transfer.

[4] According to the completion strategy of April 2004, 15 accused (in addition to the 48 who would by the end of 2004 have their trials completed or in progress) were awaiting trial in Arusha. Since then, three new accused have arrived: Munyakazi, Kanyarukiga and Setako. As a consequence, the number of indictees and suspects at large has been reduced (see V paras. 29 and 30).

[5] As discussions with States are ongoing, it is not possible to identify these five cases in the present version of the completion strategy.

IV. Resulting workload relating to detainees currently in Arusha

16. The analysis provided in sections II and III above shows that, in addition to the judgements already rendered involving 23 persons, the Tribunal will deliver judgements concerning at least 38 accused presently in Arusha (25 persons currently on trial and 13 detainees from 2005 onwards). The case involving one of these accused (Muhimana) is at the stage of closing arguments. Therefore, the time needed to complete 21 trials involving 37 detainees must be estimated.[6]

17. Predicting the required number of trial days for the completion of these trials has its difficulties. However, for the purposes of continuity and the assessment of progress, the methodology used in the previous versions of the completion strategy, will be maintained. Calculations and projections made in that document were premised on a 62 trial day average per accused.

18. It will be recalled, firstly, that the estimates in that document were based on the number of witnesses and hours needed to present the Prosecution case, cross-examination and the Defence case. Since then, numerous Prosecution witnesses have testified, in particular in the Butare Case and in the Military I trial (see paras. 9 and 10 above). However, for ease of reference, the table that formed the basis for the estimate of 62 trial days per accused is annexed to the present completion strategy (see appendix IV).

19. It is also recalled that the length of Defence cross-examination depends on factors relating to each individual case. Experience shows that in cases involving one accused, the cross-examination of Prosecution witnesses will generally take approximately the same amount of time as the examination-in-chief. In some instances, it may even be shorter. In multi-accused trials, the time taken for cross-examination often exceeds the time taken in examination-in-chief, particularly if the witness gives evidence implicating more than one or all the accused. It is assumed, as a working tool, that the total time taken for the cross-examination of a Prosecution witness will normally not exceed the total time taken for the examination-in-chief of that witness, when all cases are considered as a whole. In this context, it is taken into account that the Prosecution's list of witnesses has usually been reduced during trial.

20. Finally, it is recalled that information about Defence cases is difficult to obtain, in particular since most of these cases have not yet started and there is the issue of confidentiality when it comes to the trial strategy of the Defence. As a working tool, it is assumed that the time needed for the presentation of the Defence case should not exceed the time required for the presentation of the Prosecution case. Experience shows that it may often take less time.

21. As mentioned above, the Prosecution usually reduces the number of witnesses as the trial unfolds. Furthermore, the Chambers exert considerable control over these variables within the ambit of fair trial principles, for instance by restricting the length of examination-in-chief and cross-examination. Therefore, it is highly probable that the real time spent in court may be less than 62 trial days. Recent

[6] The 21 cases involving 38 accused are Butare (6), Military I (4), the Government Case (4), Karemera et al. (4), Muhimana (1), Simba (1), Seromba (1), Military II (4) and 13 single-accused trials of detainees presently in Arusha.

single-accused trials suggest that the Prosecution will usually require about 20 trial days to present its case, possibly less. It is also worth noting that such cases completed recently reflect a substantially lower number of the total number of trial days per accused (Elizaphan and Gérard Ntakirutimana: 30 trial days per accused; Niyitegeka: 35 trial days; Gacumbitsi: 32 trial days; Ndindabahizi: 27 trial days, and Muhimana: 34 trial days). It is expected that this trend towards shorter trials will continue. However, at present it is considered prudent to use as a working tool the estimation of 62 trial days per accused. This number includes variables such as time needed for opening and closing arguments, extended cross-examination in multi-accused trials, hearing of and deliberation on motions and illness.

Trials in progress

22. The ongoing trials are at different stages of completion. In the Butare and Military I trials, the Prosecution has closed its case after 212 and 202 days of trial, respectively. The presentation of the Defence case is scheduled to commence early next year. While the Defence case may take the same amount of time as the Prosecution case, experience in other multi-accused trials shows that the presentation of the Defence case usually requires less time compared to the Prosecution case, due to less intensive cross-examination.

23. Based on the estimate of 62 trial days per accused, the Government Case involving 4 accused will require approximately 248 trial days. The trial has, thus far, been conducted over 126 trial days. This means that a further 122 trial days will be required for the completion of the trial.

24. The Military II Case of four accused will require 248 trial days. This trial commenced on 20 September 2004 and has been conducted over 11 trial days. A further 237 trial days will be required for the completion of this trial.

25. The Karemera et al. trial, involving 4 accused, has been conducted over 25 trial days but will now start *de novo* (see para. 11 above). This means that 248 trial days will be required for the completion of that trial.

26. In the Muhimana trial, the taking of evidence has been completed in 34 trial days. Three trial days will be required for the submission of closing arguments. The Prosecution has closed its case after 30 trial days in the Simba Case. A further 32 trial days will be required for the completion of this trial, based on the estimation of 62 trial days per accused. In the Seromba Case, 41 trial days will be required for the completion of trial. This trial commenced on 20 September 2004 and proceeded over 21 trial days.

27. The cumulative time required for the completion of trials currently in progress is 1,097 trial days. Again, these are only estimates. Some trials may require longer time, others less. Additional time will be required for judgement writing.

Detainees awaiting trial

28. The Prosecutor intends to transfer 5 of the current 18 detainees to Rwanda and other national jurisdictions for trial (see paras. 13-15 above). The trials of the remaining 13 detainees will require 806 trial days, using the average of 62 trial days per accused.

V. Workload relating to persons at large

29. According to the completion strategy of April 2004, 17 indictees were at large. Following the arrest and transfer of 2 of these accused, the number has now been reduced to 15. The Prosecutor intends to transfer 4 of these accused to national jurisdictions for trial. If arrested, the remaining 11 indictees will increase the workload of the Tribunal. According to the Prosecutor, some of these indictees may have died, whereas others may never be arrested.

30. The completion strategy of September 2003 indicated that 26 suspects were at large. As the Prosecutor's strategy is to prosecute before the Tribunal those persons bearing the highest responsibility for the crimes committed in Rwanda in 1994, the number of suspects under investigation was reduced to 16 in the completion strategy of April 2004. Following a subsequent arrest and transfer to Arusha, the number of remaining suspects at large is now 15. At present, it is uncertain how many of these persons will actually be indicted. As noted in other cases, some of them may have died, whereas others may never be arrested. The Prosecutor has taken account of the mandate of the Tribunal, as emphasized by Security Council resolution 1503 (2003), to investigate reports of violations by the Rwandan Patriotic Front.

31. Once an individual is indicted, substantial investigations must be continued to support the trial team. Investigations may be needed to replace the evidence of witnesses who may have died, to assist in the interviewing of witnesses prior to their travel to Arusha, to supplement and corroborate the evidence as well as to address the Defence case and any possible rebuttal.

32. All investigations will be completed by the end of 2004, as requested by resolution 1503 (2003). Moreover, when indictments are submitted for confirmation, the Prosecutor will ensure that the case is ready for trial, in the sense that all approved identified investigations are completed, a draft pre-trial brief, draft exhibits and witness lists are prepared and disclosure searches are completed as at that date. This will ensure that (a) there will be no delay in trial preparations when the accused is surrendered to the Tribunal; (b) the case can be more readily assigned to a new Prosecution team if necessary; and (c) the case can be referred to a national jurisdiction pursuant to rule 11 bis of the Rules.

33. Additionally, while investigations of suspects at large will be concluded by the end of 2004, it cannot be anticipated that indictments will immediately be submitted for confirmation. The evidence may need to be analysed and the submission of indictments timed to coincide with tracking operations. Nevertheless, the Prosecutor anticipates that all new indictments will be submitted for confirmation by October 2005.

34. There are 11 indictees still at large and 15 suspects that the Prosecutor intends to investigate and indict; this means that the Tribunal may have to hold trials for a maximum of a further 26 persons. Based on the figure of 62 trial days per accused (see paras. 17-21 above), it is estimated that their trials could take 1,612 trial days. Again, it is stressed that the number of persons brought to trial may be less than 26, and that the number of trial days per accused may be reduced.

35. In addition to investigating and indicting the 15 suspects, the investigations section continues to provide trial support in respect of the 25 accused currently on trial, and investigation support in respect of appeals within the same period. The

anticipated increase in judicial capacity over the next four years will therefore require a corresponding shift in emphasis from classical investigations to trial and appeals support.

VI. Transfer of cases by the Prosecutor to national jurisdictions

36. The completion strategy of September 2003 indicated that approximately 40 cases were earmarked for transfer to national jurisdictions. According to the April 2004 completion strategy, the Prosecutor increased the number of these cases from 40 to 41. He is currently engaged in discussions with some States for this purpose. In addition to the 5 detainees (paras. 14 and 15 and 28 above) and the 4 indictees still at large (para. 29 above), the Prosecutor intends to transfer the cases of 32 individuals to Rwanda and other national jurisdictions for trial. The intention is to transfer, in some cases, files in respect of which investigations have been completed and are ready for trial and, in other cases, dossiers requiring further investigations by the receiving country. The decision to transfer cases to national jurisdictions is a judicial one. It is for the Chamber to determine whether the conditions for transfer are met.

37. In preliminary discussions with national authorities, the Office of the Prosecutor has learned that the laws of the State in which the suspect is present may not confer jurisdiction over the suspect or the crime. Others have investigated the cases and not pursued them and may be reluctant to reopen these cases. Many of the suspects are in less-developed countries, in which judicial systems are under strain to process the cases of their own accused. The Prosecutor believes that it is important to explore the idea of transferring cases to the African countries in which certain suspects are now living.

38. The transfer of cases to Rwanda raises several issues. One issues is the death penalty, which has been imposed in genocide cases, although only rarely implemented. There is also the issue of the capacity of the Rwandan judicial system to handle such cases at a time when it faces difficulties in coping with thousands of local cases connected with the genocide. Since many of the cases earmarked for transfer are destined for Rwanda, the issue of resources may therefore affect the proposed transfer of cases to Rwanda. The transmission of the suspects' files to Rwanda and the transfer of current detainees to Rwanda under rule 11 bis will have to await the resolution of these issues.

39. The Prosecutor will initiate discussions with States regarding the transfer of cases and transmission of files. He will insist on compliance with international standards of fair trial on the files transmitted. In the event that it is not possible to transfer or transmit these cases to national jurisdictions, he will make alternate proposals to the Security Council and highlight the related budgetary implications.

VII. Total remaining workload

40. The estimated number of trial days required for the completion of all trial work is 3,515 trial days. This is a cumulative assessment made on the basis that 1,097 trial days will be required for the completion of trials in respect of the 25 detainees currently on trial; 806 trial days will be required for the completion of

trials in respect of the 13 detainees awaiting trial; and 1,612 trial days will be required for the completion of trials in respect of the maximum of 26 persons comprising the indictees who remain at large and suspects who are likely to be indicted by October 2005.

41. In 2003, the Trial Chambers sat a total of 498 trial days. In 2002, the 3 Trial Chambers sat a total of 414 trial days. In 2001, the Chambers sat a total of 340 trial days. Examination of the Chambers' actual sitting times shows that the amount of time that a Chamber was able to devote to trial in each of the last three years was between 135 trial days in 2001, 150 trial days in 2002 and 166 trial days in 2003.[7] In the last versions of the completion strategy, projections were premised on an average of 150 trial days per year, per Trial Chamber section. For reasons mentioned above (see para. 17 above), calculations and estimates in the present report will be based on this average.

42. Factors contributing to the lower number of trial days included the difficulty of ensuring the presence of witnesses from Rwanda and illnesses of judges and counsel. The Tribunal has taken several steps to ensure that such factors are minimized in the future. In particular, the Rules have been amended to allow for a Trial Chamber to continue the trial in the eventuality of a judge being ill or absent. In the event of a longer-term absence, the relevant provision has been amended to allow cases to continue in certain circumstances (rule 15 bis). The insistence by the Trial Chambers on having two Defence counsel and, in the event of illness or absence of one counsel, requiring the remaining counsel to continue will reduce interruptions of trials. At present, witnesses from Rwanda are appearing before the Tribunal. It is important that this situation continues.

43. Experience shows that it is difficult to ensure that witnesses are always available, even with the use of additional witnesses present in Arusha. The Prosecution or Defence counsel frequently require additional time to prepare witnesses for examination-in-chief. The Chambers must also allow the Prosecution and Defence additional time for the preparation of cross-examination when unexpected evidence emerges or evidence is tendered without proper prior notice. Sufficient time is needed for pre-trial hearings, deliberation on motions and judgement writing. These circumstances as well as illnesses and other reasons for witnesses being unavailable reduce not only the number of trial days but also the number of sitting hours per trial day.[8] Nevertheless, the Chambers will continue their efforts to increase the time spent in the court room.

VIII. Past and present strategies

Pre-trial stage

44. At the start of the second mandate, in June 1999, there were a considerable number of pending pre-trial motions. The Prosecutor at that time requested the joinder of a large number of accused in one case, at one point asking for the confirmation of a joint indictment for over 20 suspects. The confirming judge

[7] The figures for 2004 are not yet available.

[8] In 2003, trial schedules were disrupted because certain judges were not re-elected. This required a reconstitution of Chambers and reorganization of their work.

denied the request. The Prosecutor then asked for joinder of smaller numbers of accused who allegedly participated in the same criminal transactions, such as the use of public media, the actions of military officials, government officials or alleged crimes in certain geographical areas of Rwanda (Butare and Cyangugu). This led to a considerable number of motions from the Prosecution requesting amendments of indictments and the joinder of accused. In addition, a large number of motions were filed by the Defence.

45. Consequently, the first priority for the Chambers in 1999 was to reduce the number of motions in order to move cases to the trial stage. To facilitate this, the judges amended the Rules so as to allow for motions to be considered on brief and by a single judge. These measures taken to reduce the workload of outstanding motions increased the efficiency of the Chambers and reduced costs related to the oral hearings of motions. After having reduced the number of pending motions to a minimum, the full translation and disclosure of documents was ordered for use in the pending trials before all three Trial Chambers could proceed to trial.

46. Additionally, changes to the Rules were adopted by the judges in the plenary to regulate the pre-trial process and to restrict the number of interlocutory appeals that were delaying the pre-trial work of the Chambers. Through pre-trial and pre-defence status conferences, a Trial Chamber has the authority to order the disclosure of information from the parties and the parties may be ordered to file briefs addressing the factual and legal issues and identifying contested matters as well as provide a list of witnesses intended to be called, with a summary of the facts and the specific allegations in the indictment on which the witnesses will testify. Moreover, the parties must give an estimate of the time that will be taken by each witness to give their evidence, and the Trial Chamber may order a reduction in the number of witnesses and the time for witnesses to give evidence-in-chief. The Trial Chamber may also demand information on the status of exhibits (rules 73 bis and ter).

47. A useful step was the establishment of the Trial Committee in 2003, which is composed of representatives of Chambers, the Registry and the Prosecution. The Committee, which is in contact with the various Defence teams, has facilitated the trial-readiness of several new cases. A translation working group has studied ways to speed up the translation of documents, thus avoiding delays in the judicial proceedings.

48. Guilty pleas reduce the length of trials. Experience shows that not more than a day is needed for a Chamber to satisfy itself that a guilty plea is informed, unequivocal and made freely and voluntarily. The writing of the judgement requires a few weeks. Unlike the situation at the International Criminal Tribunal for the former Yugoslavia, very few accused have pleaded guilty at the International Criminal Tribunal for Rwanda.[9] It is difficult at this stage to estimate how many accused at the International Criminal Tribunal for Rwanda may, in the future, plead guilty. At the plenary session in May 2003, the rules were amended, providing a legal basis for plea-bargaining. So far, however, plea-bargaining has not been used.

[9] The following judgements were based on guilty pleas: *Prosecutor v. Jean Kambanda* (1998); *Prosecutor v. Omar Serushago* (1999); *Prosecutor v. Georges Ruggiu* (2000).

The trial stage

49. All Trial Chambers have been conducting trials on a twin-track basis (in some instances, on a "triple-track" basis). This strategy has resulted in a considerable number of judgements in 2003. However, twin-tracking two big cases or more is a cumbersome process. Experience shows that the best model is to twin-track one big case and one small one, and this strategy will be followed in the future unless the big case is particularly voluminous and complex. When required, the Tribunal is using the "shift system", in which one courtroom is used for two cases heard in morning and afternoon sessions. The shift system operates in a morning shift (from for instance, 845 to about 1300 hours) and an afternoon shift (until approximately 1830).

50. Following the Tribunal's request of 9 July 2001, the Security Council adopted resolution 1431 (2002), which enabled the creation of a pool of 18 ad litem judges. The purpose of this reform, which followed a similar Security Council resolution for the International Criminal Tribunal for the former Yugoslavia in 2000, was to increase the judicial capacity of the International Criminal Tribunal for Rwanda. The election of the 18 ad litem judges by the General Assembly took place on 25 June 2003. The first ad litem judge took office on 1 September 2003, and three other ad litem judges arrived in October 2003. Pursuant to two other requests on 8 September 2003 and 29 September 2003, respectively, the Security Council adopted resolution 1512 (2003), which increased from four to nine the number of ad litem judges who could take office at any one time. The Security Council also conferred on the ad litem judges the competence to adjudicate over pre-trial matters. The fifth judge arrived in March 2004. The arrival of the five ad litem judges made it possible to start four new trials and to continue the Butare trial. After the arrival of the remaining four ad litem judges in September 2004, it was possible to start another two trials.[10]

51. With nine ad litem judges, the Tribunal would be able to set up six Trial Chamber sections. These six sections will be able to produce 4,500 hours of trial work over 900 trial days per year. However, it follows from the Tribunal's Statute that a Trial Chamber section must be comprised of both permanent and ad litem judges. Hence, the full utilization of ad litem judges depends on the availability of permanent judges. At present, several permanent judges are engaged in voluminous trials.[11] This reduces the possibility of increasing, on a permanent basis, the number of Trial Chambers sections to six. However, experience shows the usefulness of twin-tracking one joint trial with a single-accused trial, as well as the Trial Chamber sections sitting in shifts. Therefore, the number of Trial Chamber sections will be approximately six, even if they are not all sitting on a permanent basis.

[10] From September 2003 to the end of April 2004, ad litem judges participated in the following four new trials: Ndindabahizi, the Government Case, Karemera et al. and Muhimana. From September 2004, ad litem judges also sat in the Seromba trial and the Military II Case.

[11] Two permanent judges sit in the Butare Case, three in the Military I trial and two in the Karemera et al. Case. In the Government Case, the Chamber is composed of one permanent and two ad litem judges.

52. As mentioned above, eight trials have been in progress since September 2004, of which five are voluminous joint trials.[12] It is important to find the right balance between the multi-accused and single-accused trials. With only three courtrooms available, the Tribunal must continue to sit in morning and afternoon shifts. Such sessions are approximately two hours shorter than full trial days. The construction of a fourth courtroom would allow for more full trial days, increase the progress of the multi-accused trials and increase the courtroom capacity when appeals are heard. The Tribunal is currently looking into this possibility.

53. In spite of all the measures taken to accelerate the proceedings, cases will still be time-consuming. It should be remembered that conducting judicial proceedings at the international level is a more complicated task than at the national level. The cases at the ad hoc Tribunals are legally and factually very complex. A considerable volume of documents is required to try the alleged architects of the atrocities, including high-ranking members of the Government. The documents are all subject to disclosure and must be translated for legal teams and accused, who may require translations of all the documents into an official language of the Tribunal before they respond to motions or undertake trial preparation. The number of witnesses is often considerable in joinder cases, and a simultaneous interpretation of all testimony is required into three languages. Witnesses often must be extracted from a difficult environment, afforded considerable protection before and after testimony and sometimes relocated. The staff and counsel involved in cases come from different cultures and traditions, and effective communication requires new skills and extra effort. Prosecution and Defence counsel come from all over the world and have different courtroom styles. Defence counsel must leave their other casework for considerable periods to spend time working at the Tribunal in Arusha, usually away from their practices.

Administrative matters

54. With the shift in emphasis of the Tribunal from one centred on investigation and arrests to one centred on trials, the Registry will focus its attention on the end-date for the Tribunal in all its workplaces. No contract will be entered into, no item of equipment purchased, no personnel recruited without considering how the closing of the Tribunal will affect the issue and how the issue will, in turn, affect the completion strategy.

55. In assessing its needs for human resources with a view to promoting the implementation of its completion strategy, the Prosecution envisages a substantial increase in the number of trial attorneys and an expansion of its Appeals Section. Investigative and administrative support is also needed. This increase will be addressed by redeployment. The Prosecution expects that at the anticipated conclusion of investigations at the end of 2004, some posts presently held by investigators could be redeployed to increase the number of trial attorneys, legal advisers and other staff required for trial.

[12] There were eight Trial Chamber sections in the last four months of 2004: Butare, Military I, the Government Case, Karemera et al., Muhimana, Simba, Military II and Seromba. This is possible because some judges sit in two trials, either because of twin-tracking or the shift system.

Sufficient resources

56. In order to respect the timeframes laid down by Security Council resolutions 1503 (2003) and 1534 (2004), the Tribunal must continue to receive the necessary resources. As certain Member States have failed to pay their contributions to the two ad hoc Tribunals, the United Nations administration has frozen the recruitment of new staff. So far, this has not had any significant effect on the completion strategy: the Tribunal has been able to keep the trials going. The situation, however, is becoming critical. Many vacant positions are directly linked to the Tribunal's judicial production.[13]

IX. Conclusions

57. Based on the estimated workload outlined above, it is possible to draw the following conclusions.

58. As mentioned above, there are currently 25 detainees in eight trials (Butare, Military I, the Government Case, Karemera et al., Military II, Muhimana, Simba, Seromba), five of which are lengthy because they are joint trials. These trials are at different stages. An estimated 1,097 trial days will be required for their completion. Trials of the 13 detainees awaiting trial will require approximately 806 trial days. Approximately 1,612 trial days will be required for the completion of the trials of the 26 indictees who remain at large and of the suspects who are likely to be indicted.

59. In the completion strategy of April 2004, it was projected that in 2004, three trials (Gacumbitsi, Ndindabahizi and Muhimana) would be completed. This target was met. Two judgements have been delivered and the third (Muhimana) is expected in early 2005. It was also stated that three trials involving six accused (Simba, Seromba and Military II) would commence from May to September 2004, a goal which was also accomplished.

60. In 2005, trials in the Military I, Butare and Government Cases are expected to be completed. Judgements will be rendered in the Muhimana, Simba and Seromba Cases. It is expected that three single-accused trials involving detainees awaiting trial will commence within the year.

61. In 2006, the Karemera et al. and Military II trials are expected to be completed.[14] With the completion of most multi-accused trials, more permanent judges will become available to sit with ad litem judges. It is therefore expected that six new single-accused trials could commence in 2006.

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[13] As of 19 November 2004, over 80 staff members have left the Tribunal since the freeze was imposed. In the three Trial Chambers, there were nine vacant posts for legal officers. This means that several permanent and ad litem judges have no associate legal officers. The judges are sharing legal officers through ad hoc arrangements. As for the Prosecution, a separate office of the Prosecutor was created by Security Council resolution 1503 (2003), but only half of the complement of six support staff has been recruited. In the Appeals Section, 5 out of 11 legal posts are vacant. There are 17 vacancies in the Trial Section, greatly reducing the capacity of the trial Prosecution teams. The Registry's ability to provide support to the judicial process is also affected. Furthermore, the lack of resources affects the Defence teams.

[14] In the completion strategy of April 2004, it was projected that the Karemera et al. trial would be completed by 2005. However, the Appeals Chamber has ordered that this trial commence *de novo*.

62. In 2007, six single-accused trials could commence, including indictees at large or suspects. Depending on the progress of these cases, six single-accused trials could start in 2008.

63. The above projections imply that, by 2008, the Tribunal might be able to complete the trials and judgments of 65 to 70 persons, depending on the progress of current and future trials. Again, it should be emphasized that this is an estimate. The Tribunal is committed to bringing to justice those persons most responsible for the genocide and violations of international humanitarian law committed in Rwanda in 1994. In this process, the Tribunal will establish the guilt or innocence of the accused, bring justice to the victims of those massive crimes and establish a record of facts that can aid reconciliation in Rwanda. The Tribunal will also leave a legacy of international jurisprudence to guide future courts and deter those who would commit these types of grave crimes in the future.

64. The present document is part of the Tribunal's continuing process of refining its completion strategy. The Tribunal welcomes contributions to this process.

Appendix I

Persons convicted or acquitted: 23 accused in 17 judgements

First mandate (May 1995-May 1999)

Name	*Former title*	*Initial appearance*	*Trial Chamber (TC)*	*Judgement*
J.-P. Akayesu	Bourgmestre of Taba	30 May 1996	TC1	2 September 1998
J. Kambanda	Prime Minister	1 May 1998	TC1	4 September 1998 (guilty plea)
O. Serushago	Businessman, Interahamwe leader	14 December 1998	TC1	5 February 1999 (guilty plea)
C. Kayishema	Prefect of Kibuye	31 May 1996	TC2	21 May 1999 (joinder)
O. Ruzindana	Businessman	29 October 1996		
G. Rutaganda	Businessman, 2nd Vice-President of Interahamwe	30 May 1996	TC1	6 December 1999
A. Musema	Businessman	18 November 1997	TC1	27 January 2000
Sum first mandate				**Six judgements (seven accused)**

Second mandate (May 1999-May 2003)

G. Ruggiu	RTLM Journalist	24 October 1997	TC1	1 June 2000 (guilty plea)
I. Bagilishema	Bourgmestre of Mabanza	1 April 1999	TC1	7 June 2001
G. Ntakirutimana	Doctor	2 December 1996	TC1	21 February 2003 (joinder)
E. Ntakirutimana	Pastor	31 March 2000		
L. Semanza	Bourgmestre of Bicumbi	16 February 1998	TC3	15 May 2003
E. Niyitegeka	Minister of Information	15 April 1999	TC1	15 May 2003
J. Kajelijeli	Bourgmestre of Rukingo	19 April 1999	TC2	1 December 2003
F. Nahimana	RTLM Director	19 February 1997	TC1	"Media Case" (joinder)
H. Ngeze	Kangura Editor	19 November 1997		3 December 2003
J.-B. Barayagwiza	Director, Ministry of Foreign Affairs	23 February 1998		
J. Kamuhanda	Minister of Culture and Education	24 March 2000	TC2	22 January 2004

A. Ntagerura	Minister of Transport	20 February 1997	TC3	"Cyangugu Case" (joinder)
E. Bagambiki	Prefect of Cyangugu	19 April 1999		25 February 2004
S. Imanishimwe	Lieutenant in FAR	27 November 1997		
Sum second mandate				**Nine judgements (14 accused)**

Trials started and completed within the third mandate (May 2003-May 2007)

Name	*Former title*	*Initial appearance*	*Trial Chamber (TC)*	*Judgement*
S. Gacumbitsi	Bourgmestre of Rurumo	20 June 2001	TC3	17 June 2004. Trial started on 28 July 2003
E. Ndindabahizi	Minister of Finance	19 October 2001	TC1	15 July 2004. Trial started on 1 September 2003
Sum third mandate so far				**Two judgements (two accused)**

Positions held by the accused in 1994: 1 Prime Minister, 4 Ministers, 2 Prefects, 5 Bourgmestres, 1 Senior Administrator, 3 Media, 1 Military, 1 Clergy, 5 Other.

Appendix II

Trials in progress: 25 detainees in 8 cases

Name	Former title	Initial appearance	Trial Chamber (TC)	Comments
P. Nyiramasuhuko	Minister of Family and Women's Affairs	3 September 1997	TC2	"Butare Case" (joinder)
A. S. Ntahobali	Interahamwe leader	17 October 1997		Started in second mandate
S. Nsabimana	Prefect of Butare	24 October 1997		Completion in 2005
A. Nteziryayo	Prefect of Butare	17 August 1998		
J. Kanyabashi	Bourgmestre of Ngoma	29 November 1996		
E. Ndayambaje	Bourgmestre of Muganza	29 November 1996		
T. Bagosora	Dir. of Cabinet, Ministry of Defence	20 February 1997	TC1	"Military I Case" (joinder)
G. Kabiligi	Brigadier-General in FAR	17 February 1998		Started in second mandate
A. Ntabakuze	FAR Battalion Commander	24 October 1997		Completion in 2005
A. Nsengiyumva	Lieutenant-Colonel in FAR	19 February 1997		
C. Bizimungu	Minister of Health	3 September 1999	TC2	"Government Case" (joinder)
J. Mugenzi	Minister of Commerce	17 August 1999		
J. Bicamumpaka	Minister of Foreign Affairs	17 August 1999		Started 5 November 2003. Completion in 2005
P. Mugiraneza	Minister of Civil Service	17 August 1999		
E. Karemera	Minister of Interior, V-P of MRND	7 April 1999	TC3	"Karemera et al. Case" (joinder)
M. Ngirumpatse	D-G of Ministry of Foreign Affairs, President of MRND	7 April 1999		Started 27 November 2003; commences *de novo*. Completion in 2006
J. Nzirorera	President of National Assembly, S-G of MRND	7 April 1999		
A. Rwamakuba	Minister of Education	7 April 1999		
M. Muhimana	Councillor	24 Nov. 1999	TC 3	Started on 29 March 2004. Judgement in early 2005
A. Simba	Lieutenant-Colonel in FAR	18 March 2002	TC1	Started on 30 August 2004. Judgement in 2005

Name	Former title	Initial appearance	Trial Chamber (TC)	Comments
A. Seromba	Priest, Kivumu Commune	8 February 2002	TC3	Started on 20 September 2004. Judgement in 2005
A. Ndindilyimana	Chief of Staff of Gendarmerie	27 April 2000	TC2	"Military II Case" (joinder). Started on 20 September 2004. Completion in 2006
F-X Nzuwonemeye	FAR Battalion Commander	25 May 2000		
I. Sagahutu	2IC of Reconn. Battalion	28 November 2000		
A. Bizimungu	Chief of Staff of FAR	21 August 2002		

Positions held by the accused in 1994: 7 Ministers, 1 Parliamentarian, 2 Prefects, 1 senior administrator, 2 Bourgmestres, 1 Councillor, 9 military, 1 clergy, 1 other.

Appendix III

Awaiting trial: 18 detainees

Name	Former title	Initial appearance	Trial Chamber (TC)	Number of witnesses for the Office of the Prosecutor*
T. Muvunyi	Commander, École Sous-officiers	8 November 2000	TC3	22 witnesses
S. Nchamihigo	Deputy Prosecutor	29 June 2001	TC1	15
J. Mpambara	Bourgmestre of Rukara	8 August 2001	TC1	30
E. Rukundo	Chaplain	26 September 2001	TC3	20
P. Zigiranyirazo	Businessman	10 October 2001	TC3	30
F. Karera	Prefect of Kigali Rural	26 October 2001	TC3	15
P. Bisengimana	Bourgmestre of Gikoro	18 March 2002	TC2	15
V. Rutaganira	Councillor of Mubuga	26 March 2002	TC3	15
J. Nzabirinda	Youth Organizer	27 March 2002	TC2	15
S. Bikindi	Musician	4 April 2002	TC3	30
H. Nsengimana	Rector, Christ-Roi College	16 April 2002	TC2	15
J.-B. Gatete	Bourgmestre of Murambi	20 September 2002	TC1	30
T. Renzaho	Prefect of Kigali	21 November 2002	TC2	30
I. Hategekimana	Lieutenant, Commander of Ngoma Camp, Butare	28 February 2003	TC3	
J. Rugambarara	Bourgmestre of Bicumbi	15 August 2003	TC2	
Y. Munyakazi	Interahamwe leader	12 May 2004	TC1	
G. Kanyarukiga	Businessman	22 July 2004	TC1	
E. Setako	Colonel	22 November 2004		

Positions held by the accused in 1994: 2 Prefects, 4 Bourgmestres, 1 Councillor, 1 lesser admin; 3 military, 2 clergy, 5 others.

* The number of witnesses for the Office of the Prosecutor heard during a trial is normally lower than pre-trial estimates.

Appendix IV

Estimates based on the Prosecutor's (OTP) figures for current detainees (Previous completion strategy)

Case		Number of accused	Number of OTP witnesses	Number of hours for OTP case-in-chief	Number of hours for Defence cross-examination	Number of hours for Defence case-in-chief	Number of hours for OTP cross-examination	Total hours
1.	Butare	6	68	330	330	330	330	1 320
2.	Military I	4	100	500	500	500	500	2 000
3.	Muvunyi and Hategikimana	2	43	180	180	180	180	720
4.	Seromba	1	20	100	100	100	100	400
5.	Ndindabhizi	1	15	50	50	50	50	200
6.	Military II	4	90	500	500	500	500	2 000
7.	Government I	4	50	300	300	300	300	1 200
8.	Karemera et al.	4	45	300	300	300	300	1 200
9.	Zigiranyirazo	1	30	100	100	100	100	400
10.	Bikindi	1	30	100	100	100	100	400
11.	Renzaho	1	30	100	100	100	100	400
12.	Gikongoro	1	41	170	170	170	170	680
13.	Bisengimana	1	15	50	50	50	50	200
14.	Karera	1	15	50	50	50	50	200
15.	Mpambara	1	30	150	150	150	150	600
16.	Gacumbitsi	1	30	120	120	120	120	480
17.	Rukundo	1	20	80	80	80	80	320
18.	Nzabirinda	1	15	60	60	60	60	240
19.	Nsengimana	1	15	60	60	60	60	240
20.	Muhimana	1	15	60	60	60	60	240
21.	Rutaganira	1	15	60	60	60	60	240
22.	Gatete	1	30	120	120	120	120	480
23.	Nchamihigo	1	15	60	60	60	60	240
24.	Rugambarara	1	20	80	80	80	80	340
	Total	**42**	**794**	**3 680**	**3 680**	**3 680**	**3 680**	**14 740**